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GENERAL COUNSEL
OF COPYRIGHT

MAR 11 1998

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February 10, 1998

The Honorable Lewis Hall Griffith
The Honorable Jeffrey S. Gulin
The Honorable Edward Dreyfus
c/o Gina Giuffreda
Copyright Arbitration Royalty Panel
Library of Congress
P.O. Box 70977
Southwest Station
Washington, D.C. 20024

Re: Noncommercial Educational Broadcasting Compulsory License
Docket No. 96-6 CARP NCBRA

Dear Judges Griffith, Dreyfus and Gulin:

We have received Mr. Rich's letter addressed to each of you. His letter is dated February 5, 1998 and purports

...to withdraw the proposal that certain hearing dates be moved to New York [i.e. Manhattan] and instead recommend that pursuant to the normal CARP procedures and the pre-existing expectations of the parties, the copyright office and the panel members, the hearing process go forward in Washington, D.C.

Contrary to the implication in Mr. Rich's letter, CARP Rule 251.11(b) makes clear that the place of CARP hearings is set by the arbitrators. Presumably, venue will be determined by them in accordance with the convenience of the arbitrators as well as all parties and witnesses.

BMI's and ASCAP's counsel had agreed with counsel for PBS and NPR that the direct testimony and cross-examination of ASCAP's and BMI's approximately 20 witnesses as well as the approximately five witnesses for PBS and NPR would be held in Manhattan. That agreement was subject to the approval of the arbitrators and the absence of objection by the Library of Congress.

Shortly before the first session of the CARP was convened, we were informed that PBS and NPR had undergone a change of heart. According to their counsel, hearings should be held in Manhattan only with respect to ASCAP's and BMI's cases. Although this was a change in our agreement, counsel for BMI and ASCAP, as a gesture of cooperation, accepted that change.

As pages 29-30 of the transcript disclose:

MR. RICH: Judge, since I feel somewhat responsible for floating this entire conception [i.e. of holding all hearings in Manhattan]...I ought to amplify slightly some of the evolving thinking at least at this side of the table...

Without doubt, from the standpoint of counsel and many of the witnesses, New York is the preferred site. I hasten to add that having had more opportunity to chat with our clients, who are all Washington, D.C. residents, there is at least a strong preference for the portion of the case to be presented by PBS and NPR when that happens in the cycle, that that occur in the normal process here in Washington for the convenience both of witnesses and clients' counsel.

At no times was it suggested that all hearings would be held in Washington. Mr. Rich goes on to say that those "trial weeks" which will be "witness intensive on the part of ASCAP and BMI, if it otherwise works, should occur in New York City." (*Id.* at 31).

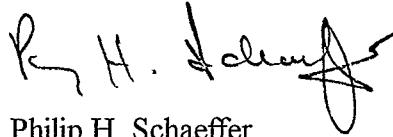
PBS and NPR now seek again to renege on the agreement made by their counsel. Their primary justification is that holding hearings in Manhattan may result in additional expense and inconvenience to PBS and NPR. It is undisputed that hearings in New York would be far less burdensome to ASCAP, BMI and their respective witnesses. Certainly, PBS and NPR are no less able than BMI or ASCAP to afford the additional expense involved in alternating the venue of the CARP depending on whose side of the case is being heard.

At issue is not just the expense or convenience of conducting hearings where the bulk of BMI's and ASCAP's approximately 20 witnesses reside and work. If PBS' and NPR's application is now granted, when can the parties rely on agreements as to the conduct of the CARP made between their counsel and approved by the arbitrators?

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We ask for denial of the request of PBS and NPR that all hearings in this CARP be held in Washington. The hearings with respect to BMI's and ASCAP's witnesses should be held, as agreed, in Manhattan.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Philip H. Schaeffer", with a stylized flourish at the end.

Philip H. Schaeffer

PHS:mlm

cc: Hughes, Hubbard & Reed, LLP
Weil, Gotshal & Manges, LLP
Joan M. McGivern, Esq.
Beverly Willett, Esq.

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February 10, 1998

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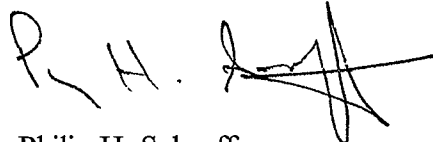
Gina Giuffreda, Esq.
U.S. Copyright Office
General Counsel
Library of Congress
Washington, D.C. 20059-6000

Dear Ms. Giuffreda:

Enclosed is a letter which we would appreciate your transmitting to the arbitrators in Docket No. 96-6 CARP NCBRA.

Thank you.

Very truly yours,



Philip H. Schaeffer

PHS:mlm

Enclosure

cc: Weil, Gotshal & Manges, LLP (via facsimile)
Hughes, Hubbard & Reed, LLP (via facsimile)
Joan M. McGivern, Esq. (via facsimile)
Beverly Willett, Esq. (via facsimile)